



## Legal Update

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March 2018

***The SJC held that the police were justified in stopping a motor vehicle and seizing a pellet gun after receiving an anonymous 911 call that reported there was a man in a Jeep pointing a gun at the caller.***

*Commonwealth v Manha*, 479 Mass. 44 (2018): On July 9, 2012, Trooper John Guest received a radio bulletin from his dispatcher who received a 911 call regarding a road rage incident. The caller told police that another motorist pointed a gun at her while she was driving southbound on Route 93 in Boston. The caller described the man as a white male in his forties wearing glasses and driving a gray Jeep Cherokee. The caller gave police the Jeep's registration number, location and direction of travel. Trooper Guest found the vehicle and followed for a few miles. Within minutes of receiving the dispatch, Trooper Guest and two other troopers stopped the vehicle with guns drawn. The troopers ordered the defendant out of the vehicle, conducted a pat-frisk, and found nothing on his person. The police conducted a protective sweep of the vehicle and located a black case which contained a pellet gun that look similar to a handgun. The defendant appealed his conviction for assault with a dangerous weapon and argued that the police lacked probable cause to stop the motor vehicle. The SJC heard the case on further appellate review.

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

**Conclusion:** The SJC held that the police possessed reliable information that gave them reasonable suspicion to stop and perform a protective sweep of the defendant's motor vehicle.

**1<sup>st</sup> Issue: Did police have reasonable suspicion to stop the motor vehicle?**

The SJC held that the police had reasonable suspicion to stop the defendant's motor vehicle based on the particular information they received from dispatch. When police receive information from a radio broadcast, the Commonwealth must show that the particularity of the vehicle's description and indicia of reliability of the broadcast information. Here, the broadcast contained specific details that included the make, model, color and registration of the defendant's vehicle as well as a description of the driver.

The SJC applied the two-prong *Aguliar-Spinelli* test to determine whether the 911 caller was sufficiently reliable to support reasonable suspicion. The SJC held that the basis of knowledge prong was satisfied based on the firsthand observations that the caller provided. The caller was a victim of an alleged assault and relayed specific details about the vehicle, the driver and the location of the incident. With regard to the veracity prong, the SJC treated the caller as an anonymous because it was not fully established if the caller was identified by the police. The SJC found that even though the caller did not provide her name, she was identifiable -- if not identified -- by the mere fact that her call is recorded and her telephone number can be traced. *Commonwealth v. Depiero*, 473 Mass. 450, 455 (2016). Even where a 911 caller is anonymous, the reliability of a caller can be established "through independent corroboration by police observation or investigation of the details of the information provided by the caller" prior to the stop being initiated. Additionally, the caller's veracity can be demonstrated if the "caller just witnessed a startling or shocking event, description of the event, and that description was made so quickly in reaction to the event as reasonably to negate the possibility that the caller was falsifying the description or was carrying out a plan falsely to accuse another." *Commonwealth v. Anderson*, 461 Mass. 616, 624 (2012).

Based on a combination of factors, the SJC found that the police had reasonable suspicion to stop the motor vehicle. The following factors established the caller's reliability:

1. **Caller was identifiable:** The caller was the alleged victim, reported the incident through a recorded line, and remained on the line while the dispatcher relayed her information to the trooper.

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2. **Police corroboration:** The police were able to corroborate details of the report prior to stopping the motor vehicle, which included the vehicle's make, model, color, and registration number, as well as the driver's race and gender.
3. **Nature of the crime:** The SJC indicated that the nature of the crime, which involved the defendant pointing a gun at the caller, can be considered in the reasonable suspicion calculus. "Given the reported assault with a firearm, the police would have been remiss had they not conducted an investigatory stop of the defendant's motor vehicle." *Id.* at 625.

Based on the nature of crime, the SJC held that the police had reasonable suspicion to stop the defendant's motor vehicle and take protective measures to ensure officer safety, including ordering the driver out of the Jeep at gunpoint. "Given the possible danger to themselves and the public, each step the troopers took was a reasonably prudent protective measure." *Commonwealth v Edwards*, 476 Mass. 341 (2017). Taking appropriate precautions does not turn an investigatory stop into an arrest. *Commonwealth v. Haskell*, 438 Mass. 390 (2003).

## **2<sup>nd</sup> Issue: Did the police conduct a proper protective sweep of the rear of the vehicle?**

The SJC held that the police reasonably conducted a protective sweep of the defendant's motor vehicle and they did not exceed the permissible grounds of the sweep when they searched the rear of the vehicle. Here the police believed the defendant possessed a gun and had pointed it at the caller. While the police did not find anything where the defendant was immediately seated, the police reasonably searched the rear of the motor vehicle. A protective sweep of a passenger compartment may encompass areas that generally are reachable without exiting the vehicle and can include areas that are hatches or rear storage areas. Where the police have reasonable suspicion that someone has a gun and has threatened another with it, the protective sweep may also extend to closed containers found within the vehicle's passenger compartment. *Michigan v. Long*, 463 U.S. 1032, 1050-1051 (1983). Searchable containers may include glove compartments, consoles, or other receptacles as well as luggage, boxes, bags, clothing, and the like. The SJC has also found that a protective *Terry* sweep may include opening containers where "particular features of the container, readily observable by the police, may make it apparent that nothing short of opening the container will suffice to address the officer's reasonable suspicions." *Commonwealth v. Pagan*, 440 Mass. 62, 72 (2003). Based on the facts in this case, the police were justified in opening a case that reasonably could have contained a weapon as a part of the protective sweep.

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